

Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

INTERNATIONAL FRANCHISE
ASSOCIATION, INC., *et al.*,

Plaintiffs,

v.

CITY OF SEATTLE, *et al.*,

Defendants.

No. C14-848RAJ

**JOINT STATUS REPORT
AND DISCOVERY PLAN**

JOINT STATUS REPORT
AND DISCOVERY PLAN
(C14-848RAJ)

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1 Pursuant to Fed. R. Civ. P. 26(f), LCR 26(f), this Court's Order of July 8, 2014 (Dkt. #
2 11), and the conference of the parties held on August 7, 2014, the parties hereby submit this Joint
3 Status Report and Discovery Plan ("Report").
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5 1. *Nature and complexity of the case.* This is a civil action challenging certain
6 provisions of Seattle's new minimum wage ordinance. *See* Seattle City ordinance No. 124990.
7 Plaintiffs—the International Franchise Association, Inc., Charles Stempler, Katherine Lyons,
8 Mark Lyons, Michael Park, and Ronald Oh—challenge those provisions of the ordinance that
9 define small franchise businesses as large employers for purposes of phasing-in a \$15.00 per
10 hour minimum wage. The Defendants are the City of Seattle and Fred Podesta, the Director of
11 the Department of Finance and Administrative Services. Plaintiffs' Complaint (Dkt. # 1) raises
12 claims under the Commerce Clause of the U.S. Constitution; the Equal Protection Clause of the
13 Fourteenth Amendment to the U.S. Constitution; the First Amendment to the U.S. Constitution;
14 the Contracts Clause of the U.S. Constitution; the Lanham Act; the Employee Retirement
15 Income Security Act ("ERISA"); Article I, Section 12 of the Washington State Constitution; and
16 the corporate separateness doctrine. The Seattle ordinance phases in minimum wage increases
17 more quickly for large employers (those with more than 500 employees) than for small
18 employers (those with 500 or fewer employees), and treats as large employers "all franchisees
19 associated with a franchisor or a network of franchises with franchisees that employ more than
20 500 employees in aggregate in the United States." The ordinance's treatment of franchisees in
21 this manner raises questions of first impression. Under the ordinance, new minimum wage
22 requirements begin to take effect on April 1, 2015.
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1 Plaintiffs filed a motion for a preliminary injunction on August 5, 2014. *See* Dkt. # 37
 2 and 38. On August 12, 2014, the parties filed letters with the Court regarding their proposed
 3 briefing schedules for the preliminary injunction motion. *See* Dkt. # 39 and 40. The parties
 4 subsequently agreed that, absent an order setting a different schedule, the City of Seattle and
 5 Defendant Podesta shall have until September 16, 2014, to file their response to Plaintiffs'
 6 motion, and that Plaintiffs shall have until September 30, 2014, to file their reply brief in support
 7 of their motion. The parties note that a motion for leave to file an *amicus* brief in support of
 8 Plaintiffs is pending. *See* Dkt. # 43.

12 2. *Joining of additional parties.* The parties propose a deadline of October 31, 2014,
 13 for their joining additional parties. The parties note that there is a pending motion to intervene.
 14 *See* Dkt. # 18. Plaintiffs oppose the motion. *See* Dkt. # 45, 51 and 52.

16 3. *Assignment of case to U.S Magistrate Judge for all proceedings.* No.

17 4. *Discovery plan and Fed. R. Civ. P. 26(f)(3) items and topics.* The parties' views
 18 and proposals are as follows:

20 (A) *Initial disclosures.* The parties exchanged Initial Disclosures on August 14, 2014,
 21 in compliance with this Court's Order of July 8, 2014 (Dkt. # 11).

23 (B) *Subjects, timing, and potential phasing of discovery.*

24 *Plaintiffs' statement:*

26 Plaintiffs propose a seven-month discovery period from September 2, 2014 to April 2,
 27 2015. A seven-month discovery period is necessary and appropriate given the large number of
 28 document custodians and witnesses in this case, including the Mayor of Seattle and his staff,
 29 members of the Mayor's minimum wage advisory committee, and Members of the Seattle City
 30 Council.

1 Council and their staffs. The fact that the Mayor, City Council Members, and staff are document
 2 custodians and likely deponents may complicate and delay the scheduling and obtaining of
 3 discovery. The subjects of Plaintiffs' discovery will include the discriminatory purpose and
 4 effect of the minimum wage ordinance; the ordinance's discrimination against small franchise
 5 businesses, the process of formulating the ordinance, and the legislative history of the ordinance.
 6 Plaintiffs oppose Defendants' proposal to take four months of discovery before Defendants
 7 respond to Plaintiffs' motion for preliminary injunction for the reasons stated in Plaintiffs' letter
 8 to the Court dated August 12, 2014. *See* Plaintiffs' letter (Dkt. # 39) and Defendants' letter (Dkt.
 9 # 40).

13 *Defendants' statement:*

14 Defendants propose a discovery period from September 2, 2014 to January 8, 2015.
 15 Defendants will seek discovery not only from the named Plaintiffs, but also from the corporate
 16 entities that actually own the franchisee businesses named in the Complaint, from the
 17 corresponding franchisors, and from other non-party franchisors and franchisees. The subjects of
 18 Defendants' discovery will include the financial and other business arrangements that
 19 franchisees (including but not limited to those named in the Complaint) have with their
 20 franchisors, and the differences between operating a business as a franchise as opposed to an
 21 independent business.

22 (C) *Electronically stored information.* The parties intend to use the Model Protocol
 23 for Discovery of ESI.

24 (D) *Privilege issues.* No proposals.

1 (E) *Proposed limitations on discovery.* The parties intend to jointly propose a
 2 Protective Order to this Court.

3 (F) *The need for discovery related orders.* No proposals.

4 5. *Local Civil Rule 26(f)(1) items and topics:*

6 (A) *Prompt case resolution.* Please see Paragraph 9, *infra*.

7 (B) *Alternative dispute resolution.* Please see Paragraph 9, *infra*.

8 (C) *Related cases.* There are no related cases.

9 (D) *Discovery management.* No proposals.

10 (E) *Anticipated discovery sought.* The parties anticipate that the modes of discovery
 11 may include depositions, interrogatories, requests for production of documents, and requests for
 12 admission.

13 (F) *Phasing motions.* No proposals.

14 (G) *Preservation of discoverable information.* No proposals.

15 (H) *Privileges issues.* No proposals.

16 (I) *Model Protocol for Discovery of ESI.* The parties intend to use the Model
 17 Protocol.

18 (J) *Alternatives to Model Protocol.* No proposals.

19 6. *The date by which discovery can be completed:*

20 6a. Plaintiffs state that discovery can be completed by April 2, 2015. Plaintiffs
 21 propose a seven-month discovery period from September 2, 2014 to April 2, 2015. *See*
 22 Paragraph 4(B), *supra*.

23 6b. Defendants state that discovery can be completed by January 8, 2015.

1 7. *Bifurcation.* The parties agree the case should not be bifurcated by trying the
2 liability issues before the damages issues, or bifurcated in any other way.

3 8. *Pretrial statements and order.* The parties agree that the pretrial statements and
4 pretrial order called for by LCR 16(e), (h), (i), and (k), and 16.1 should not be dispensed with,
5 although their views may change as the time for trial, if any, draws closer and, if so, the parties
6 will so inform this Court.
7

8 9. *ITP and ADR.* Given the nature of this case, *i.e.*, a constitutional challenge to
9 certain provisions of a Seattle City Ordinance, the parties agree that it would not promote the
10 resolution of this case to utilize either the Individualized Trial Program in LCR 39.2 or the ADR
11 options in LCR 39.1.
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13 10. *Other suggestions.* The parties agree that they do not have any other suggestions
14 for shortening or simplifying the case.
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16 11. *Date the case will be ready for trial.* The parties agree that this case is likely to
17 be decided on cross motions for summary judgment. The parties also agree that, if a trial is
18 necessary, the case will be ready for trial within one year after the filing of this Report,
19 consistent with Court's expectation for most civil cases. The parties further state as follows:
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21 11a. Plaintiffs state this case will be ready for trial no later than August 1, 2015.
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23 Plaintiffs propose a discovery cutoff of April 2, 2015, with summary judgment motions to be
24 filed by the parties and decided by the Court in the four-month period between April 2, 2015,
25 and August 1, 2015.
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11b. Defendants state that this case will be ready for trial no later than June 29, 2015. Defendants propose a discovery cutoff of January 8, 2015, with summary judgment motions to be filed by the parties by that date.

12. *Jury or non-jury trial.* The parties agree that any trial in this case would be a non-jury trial.

13. *Number of trial days.* The parties agree that, if there is a trial in this case, 4-5 trial days would be required.

14. *The names, addresses, and telephone numbers of all trial counsel.* See list following Paragraph 19.

15. *Trial date complications.* At this time, the parties are not aware of any complications relating to the availability of trial counsel to be considered in setting a trial date.

16. *Service.* The parties agree that all Defendants in this case have been served.

17. *Scheduling conference.* The parties request a scheduling conference with the Court for the limited purpose of discussing the schedule for briefing Plaintiffs' motion for preliminary injunction, unless the Court issues such a briefing schedule without a conference. Please see the parties' letters to the Court dated August 12, 2014 (Dkt. # 39 and # 40).

18. *Corporate disclosure.* The International Franchise Association, Inc., the only nongovernmental corporate party in this case, filed its disclosure statement pursuant to FRCP 7.1 and LCR 7.1 on June 11, 2014. See Dkt. # 2.

19. *Video recording.* The parties agree that they do not wish to have hearings in this matter video recorded as part of the Pilot Project on Cameras in the Courtroom.

Respectfully submitted,

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Dated: August 21, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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